



October 4, 2000

Mr. Dennis P. Duffy
General Counsel
University of Houston System
University of Houston
E. Cullen Building, Room 212
Houston, Texas 77204-2162

OR2000-3810

Dear Mr. Duffy:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 139737.

The University of Houston (the "university") received two requests for information concerning a grievance filed against the university by the requestor, including all evaluations, reviews, travel requests, payment vouchers, and merit increases related to several named individuals. You claim that the information is excepted from disclosure under sections 552.101, 552.102, 552.103, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered the requestor's submissions.

Initially, we note that some of the submitted information is public information that is not excepted from required public disclosure under the Act. We specifically refer you to section 552.022 of the Government Code, which provides in pertinent part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter *unless they are expressly confidential under other law*:

...

- (2) the name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of a governmental body;

...

- (3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022(a)(2), (3) (emphasis added). In the instant case, the submitted information contains a document that reveals the salary increases received by seven university employees. As such, this document falls within the scope of section 552.022(a)(2), and must be released. Also included in the submitted information are travel expense vouchers. These documents fall within the scope of section 552.022(a)(3) and must, with the exception of certain types of information discussed below, be released to the requestor. With regard to the public release of the salary information and travel vouchers, you have not asserted, nor do we find, any provision of law that makes these documents confidential in their entirety. Specifically, we note that section 552.103 is a discretionary exception and thereby does not constitute "other law" under section 552.022(a) that makes information confidential.¹ See *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475, 476 (Tex. App.—Dallas 1999, *no pet.*) (governmental body may waive litigation exception, section 552.103); see also Open Records Decision No. 522 at 4 (1989) (discretionary exceptions in general).

The university claims that personal credit card information contained in the travel expense vouchers is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. Section 552.102 excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977), for information claimed to be protected under the doctrine of common law privacy as incorporated by section 552.101 of the Act. Therefore, we will first address whether section 552.101 applies to the remainder of the highlighted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 also encompasses common law privacy and excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Therefore, information must be withheld from the public when (1) it is

¹Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties.

highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992). The doctrine of common law privacy does not except from disclosure the basic facts concerning a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 523 at 3-4 (1989), 385 at 2 (1983). On the other hand, common law privacy generally protects the "background" financial information of the individual, that is, for example, information about the individual's overall financial status and past financial history. *See* Open Records Decision No. 373 at 3 (1983). We find that there is no legitimate public interest in the submitted personal credit card numbers of university employees; therefore, these numbers are excepted from required public disclosure under sections 552.101 and 552.102, and the doctrine of common law privacy, and must be withheld.²

You also assert that some of the information submitted is excepted under section 552.117(1) of the Government Code. Section 552.117(1) requires that you withhold the home address, telephone number, social security number, or information revealing whether a public employee has family members, of a public employee or official who requests that this information be kept confidential under section 552.024. *See* Open Records Decision Nos. 622 (1994), 455 (1987). You may not, however, withhold the information of a current or former employee who made the request for confidentiality under section 552.024 after this request for information was made. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 at 5 (1989). In the instant case, you have submitted evidence showing that the university employees have elected not to allow public access to certain information in accordance with the procedures of section 552.024. Thus, the university must withhold this information from required public disclosure pursuant to section 552.117(1). We agree with the markings the university has made.

Additionally, we note that section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. Therefore, you must withhold all Texas driver's license numbers contained in the submitted documents.

²We note, however, that some of the travel vouchers appear to contain information relating to a credit card issued to one of the employees by the State of Texas. If this credit card number belongs to a state account, it is not personal financial information for the purposes of section 552.101. Section 5.57 of title 34 of the Texas Administrative Code provides in relevant part that "[a] state agency shall adopt reasonable procedures governing the issuance, *security*, and use of credit cards by the agency's officers and employees." 34 T.A.C. § 5.57(f) (West 1999) (emphasis added). You have not advised us what security procedures the university has adopted regarding its credit cards. We remind you that section 552.352 of the Government Code prescribes criminal penalties for the release of confidential information.

We next address the university's argument under section 552.103 of the Government Code as to the remaining documents. Section 552.103(a) excepts from disclosure information relating to litigation to which a governmental body is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the governmental body must show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). Section 552.103 requires concrete evidence that litigation may ensue. To demonstrate that litigation is reasonably anticipated, the city must furnish evidence that litigation is realistically contemplated and is more than mere conjecture. Open Records Decision No. 518 at 5 (1989). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 at 4 (1986).

Among other examples, this office has concluded that litigation was reasonably anticipated where the opposing party took the following objective steps toward litigation: (1) filed a complaint with the Equal Employment Opportunity Commission ("EEOC"), *see* Open Records Decision No. 336 (1982); (2) hired an attorney who made a demand for disputed payments and threatened to sue if the payments were not made promptly, *see* Open Records Decision No. 346 (1982); and (3) threatened to sue on several occasions and hired an attorney, *see* Open Records Decision No. 288 (1981). In this instance, you explain that the requested information relates to a pending grievance proceeding that the requestor has instituted against the university under chapter 554 of the Government Code. We note that section 554.006 of the Government Code provides in relevant part that an aggrieved party must initiate action under the grievance or appeal procedures of the employing state or local governmental entity before filing suit. *See* Gov't Code § 554.006(a). We therefore find that the pendency of the grievance proceeding demonstrates that litigation is reasonably anticipated for the purposes of section 552.103. Having reviewed the information that you seek to withhold, we also find that some of the information in question relates to the grievance proceeding for the purposes of section 552.103. We therefore conclude that some of the information submitted is excepted from public disclosure under section 552.103 of the Government Code. We have marked those documents that the university may withhold under section 552.103.

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. We also note that the applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

In summary, the university must withhold the personal credit card numbers contained in the submitted documents. Texas driver's license numbers must be withheld under section 552.130. You must also withhold section 552.117(1) information for those employees who have chosen not to allow public access to this type of information. You must release the document titled "Summary of Merit Increases & Performance Appraisal Completion Dates for FY99, FY00, and FY01" and the travel expense vouchers. We have marked the information that may be withheld under section 552.103.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

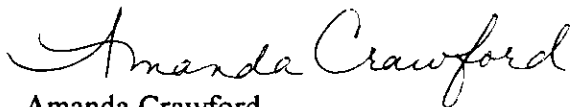
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Amanda Crawford".

Amanda Crawford
Assistant Attorney General
Open Records Division

AEC/er

Ref: ID# 139737

Encl: Submitted documents

cc: Mr. Thomas R. Wray
11206 Sky Ridge Drive
Cypress, Texas 77429
(w/o enclosures)